

Mark J. Fonte
Louis M. Gelormino
F&G LEGAL GROUP
2550 Victory Boulevard
Staten Island, New York 10314
Telephone: (917) 968-1619
mfontelaw@yahoo.com
louiegels@hotmail.com
Attorneys for Plaintiff and the Class

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK**

RACHEL MANISCALCO, individually,
and for all others similarly situated,

Plaintiff,

-against-

**THE NEW YORK CITY DEPARTMENT
OF EDUCATION, MEISHA PORTER,
SCHOOLS CHANCELLOR OF THE
NEW YORK CITY DEPARTMENT OF
EDUCATION, IN HER OFFICIAL
CAPACITY, THE CITY OF NEW YORK,
BILL de BLASIO, MAYOR OF NEW
YORK CITY, IN HIS OFFICIAL
CAPACITY, DEPARTMENT OF
HEALTH AND MENTAL HYGIENE, and
DAVE A. CHOKSHI, COMMISSIONER
OF THE DEPARTMENT OF HEALTH
AND MENTAL HYGIENE, IN HIS
OFFICIAL CAPACITY**

Case No. _____

**DECLARATION OF LOUIS
GELORMINO**

I, Louis Gelormino, an attorney admitted to practice before the courts of the State of New York and this Court, affirm the following under penalty of perjury:

1. The August 23 Order requires Plaintiff and the Class to submit proof of at least one dose of vaccination for the Covid-19 virus by September 27, 2021.

2. Unlike the vaccine mandate for federal workers announced on September 9, 2021, the August 23 Order includes no provision for DOE workers to opt-out of the mandate through testing.

3. Neither Plaintiff nor members of the Class oppose any legitimate steps to make their own workplace, and the place where they educate their students, a safer place to work and in which to learn.

4. Pursuant to the August 23 Order, any teachers who do not comply stand to lose their health benefits, their jobs, or their seniority (which consequence or consequences of the August 23 Order that Defendants shall impose on Plaintiff and the Class shifts from day to day).

5. If Defendants enforce the August 23 Order, Plaintiff and members of the putative Class may lose their income, their seniority, and/or their health benefits.

6. Termination of teachers at the beginning of the school year, with mere weeks of warning, will result in Plaintiff and Class members' being irreparably harmed.

7. While the goal of providing safe schools is a valid one, the DOE's history in the last year, as well as that of Catholic schools in New York City and throughout the United States, shows that with proper safety procedures, in particular the use of masks, it is possible to maintain a safe environment without vaccines.

8. Indeed, schools in the Brooklyn Diocese (covering Brooklyn and Queens) and the Archdiocese of New York (which includes Staten Island, Manhattan, and the Bronx) were open,

in person, full time or virtually full time, all of the last year school year without any reported so-called super spreader events or even reports of high infection rates.

9. While it may be a hardship for Defendants to require other safety procedures like masks, the benefit to the public is great, and such hardship is far outweighed by that suffered by Plaintiff and the Class, who stand to lose their livelihood.

10. The public needs to have any qualified teachers who are available to teach in the public schools—as those teachers very often did in the last year when there was no vaccine and transmission rates were much higher than they are now. With alternative proper safety procedures, transmission rates can be kept low while all teachers can fulfill their profession and teach students, advancing the public interest.

11. Plaintiff Maniscalco is a public-school teacher in Staten Island, New York. During all times relevant and material to this case, Plaintiff was employed by Defendants City and DOE.

12. Defendant DOE is a corporate body, created by Article 52 of the New York State Education Law, that manages and controls the educational affairs of New York City public schools. DOE is the “local educational agency” as defined by 14 U.S.C. § 1401(19) and 34 C.F.R. § 300.28 responsible for providing public education.

13. Defendant Porter is and was Schools Chancellor of the DOE and is and was acting under color of the DOE and in her official capacity, at all times relevant to the allegations made by Plaintiff herein.

14. Defendant City is a municipal corporation within the State of New York.

15. Defendant de Blasio is and was Mayor of the City of New York and is and was acting under color of City law and in his official capacity, at all times relevant to the allegations

made by Plaintiff herein.

16. Defendant DOHMH is responsible for public health in New York City.

17. Defendant Chokshi is and was Commissioner and is and was acting under color of the DOHMH and in his official capacity, at all times relevant to the allegations made by Plaintiff herein.

18. On July 26, 2021, de Blasio announced that the City would require all municipal workers—including teachers and custodians employed by the DOE, cops, and firefighters—to receive one dose of the Covid-19 vaccination by the time schools reopen in mid-September (the “July 26 Order”).

19. The July 26 Order allows municipal workers to opt out of the vaccine mandate if they are tested weekly for Covid-19. The City announced that the July 26 Order goes into effect on September 13, 2021, the same day the City’s public schools re-open for the year.

20. Less than one month later, however, on August 23, 2021, de Blasio, in consultation with all of the other Defendants, announced that DOE employees would no longer be able to opt out of the vaccine mandate through weekly Covid-19 tests.

21. Instead, the City’s August 23 Order requires all DOE employees—which includes 148,000 school-based staff and central staff, as well as DOE contractors who work in school-based settings—to provide proof of first dose of vaccination by September 27, 2021.

22. The August 23 Order is supported by the DOE’s Schools Chancellor Porter, who is responsible for implementing the August 23 Order across the DOE, and the DOHMH’s Chokshi, who helped craft the August 23 Order.

23. The August 23 Order does not include medical or religious exceptions to the vaccine mandate, even though the Centers for Disease Control and Prevention has warned that

no one with a serious allergic reaction to components in the Covid-19 vaccines should take the vaccine.

24. When the United Federation of Teachers raised those concerns with the City, the City replied that those with medical issues can stay on the payroll and use their sick days before being placed on unpaid leave, and those with religious objects will be placed on unpaid leave immediately, meaning that DOE workers with otherwise valid medical or religious exceptions will be left without a source of income or health insurance.

25. As of filing, the Defendants have yet to unveil any medical or religious exceptions to the vaccine mandate.

Dated: New York, New York
September 9, 2021

Lou Gelormino
Louise Gelormino

I declare under penalty of perjury that the foregoing is true and correct. Executed on September 9, 2021.